

## Federal Acquisition Regulation

## 14.501

(c) When an award is made after receipt of equal low bids, the documentation shall describe how the tie was broken.

[48 FR 42171, Sept. 19, 1983. Redesignated at 60 FR 34738, July 3, 1995]

### 14.408-8 Protests against award.

See subpart 33.1, Protests.

[50 FR 23606, June 4, 1985. Redesignated at 60 FR 34738, July 3, 1995]

### 14.409 Information to bidders.

#### 14.409-1 Award of unclassified contracts.

(a)(1) The contracting officer shall as a minimum (subject to any restrictions in Subpart 9.4)—

(i) Notify each unsuccessful bidder in writing or electronically within three days after contract award, that its bid was not accepted. "Day," for purposes of the notification process, means calendar day, except that the period will run until a day which is not a Saturday, Sunday, or legal holiday;

(ii) Extend appreciation for the interest the unsuccessful bidder has shown in submitting a bid; and

(iii) When award is made to other than a low bidder, state the reason for rejection in the notice to each of the unsuccessful low bidders.

(2) For acquisitions covered by the World Trade Organization Government Procurement Agreement or a Free Trade Agreement (see 25.408(a)(5)), agencies must include in notices given unsuccessful bidders from World Trade Organization Government Procurement Agreement or Free Trade Agreement countries—

(i) The dollar amount of the successful bid; and

(ii) The name and address of the successful bidder.

(b) Information included in paragraph (a)(2) of this subsection shall be provided to any unsuccessful bidder upon request except when multiple awards have been made and furnishing information on the successful bids would require so much work as to interfere with normal operations of the contracting office. In such circumstances, only information concerning location of the abstract of offers need be given.

(c) When a request is received concerning an unclassified invitation from an inquirer who is neither a bidder nor a representative of a bidder, the contracting officer should make every effort to furnish the names of successful bidders and, if requested, the prices at which awards were made. However, when such requests require so much work as to interfere with the normal operations of the contracting office, the inquirer will be advised where a copy of the abstract of offers may be seen.

(d) Requests for records shall be governed by agency regulations implementing Subpart 24.2.

[60 FR 42654, Aug. 16, 1995, as amended at 64 FR 72418, Dec. 27, 1999; 67 FR 6120, Feb. 8, 2002; 69 FR 1053, Jan. 7, 2004; 69 FR 77872, Dec. 28, 2004]

#### 14.409-2 Award of classified contracts.

In addition to 14.409-1, if classified information was furnished or created in connection with the solicitation, the contracting officer shall advise the unsuccessful bidders, including any who did not bid, to take disposition action in accordance with agency procedures. The name of the successful bidder and the contract price will be furnished to unsuccessful bidders only upon request. Information regarding a classified award shall not be furnished by telephone.

[48 FR 42171, Sept. 19, 1983. Redesignated and amended at 60 FR 34738, July 3, 1995]

## Subpart 14.5—Two-Step Sealed Bidding

### 14.501 General.

Two-step sealed bidding is a combination of competitive procedures designed to obtain the benefits of sealed bidding when adequate specifications are not available. An objective is to permit the development of a sufficiently descriptive and not unduly restrictive statement of the Government's requirements, including an adequate technical data package, so that subsequent acquisitions may be made by conventional sealed bidding. This method is especially useful in acquisitions requiring technical proposals,

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particularly those for complex items. It is conducted in two steps:

(a) Step one consists of the request for, submission, evaluation, and (if necessary) discussion of a technical proposal. No pricing is involved. The objective is to determine the acceptability of the supplies or services offered. As used in this context, the word *technical* has a broad connotation and includes, among other things, the engineering approach, special manufacturing processes, and special testing techniques. It is the proper step for clarification of questions relating to technical requirements. Conformity to the technical requirements is resolved in this step, but not responsibility as defined in 9.1.

(b) Step two involves the submission of sealed priced bids by those who submitted acceptable technical proposals in step one. Bids submitted in step two are evaluated and the awards made in accordance with subparts 14.3 and 14.4.

[48 FR 42171, Sept. 19, 1983, as amended at 50 FR 1739, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985]

### 14.502 Conditions for use.

(a) Unless other factors require the use of sealed bidding, two-step sealed bidding may be used in preference to negotiation when all of the following conditions are present:

(1) Available specifications or purchase descriptions are not definite or complete or may be too restrictive without technical evaluation, and any necessary discussion, of the technical aspects of the requirement to ensure mutual understanding between each source and the Government.

(2) Definite criteria exist for evaluating technical proposals.

(3) More than one technically qualified source is expected to be available.

(4) Sufficient time will be available for use of the two-step method.

(5) A firm-fixed-price contract or a fixed-price contract with economic price adjustment will be used.

(b) None of the following precludes the use of two-step sealed bidding:

(1) Multi-year contracting.

(2) Government-owned facilities or special tooling to be made available to the successful bidder.

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(3) A total small business set-aside (see 19.502-2).

(4) The use of the price evaluation adjustment for small disadvantaged business concerns (see Subpart 19.11).

(5) The use of a set-aside or price evaluation preference for HUBZone small business concerns (see subpart 19.13).

(6) The use of a set-aside for service-disabled veteran-owned small business concerns (see Subpart 19.14).

(7) A first or subsequent production quantity is being acquired under a performance specification.

[48 FR 42171, Sept. 19, 1983, as amended at 50 FR 1739, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 60 FR 48260, Sept. 18, 1995; 63 FR 35721, June 30, 1998; 63 FR 70267, Dec. 18, 1998; 69 FR 25276, May 5, 2004]

### 14.503 Procedures.

#### 14.503-1 Step one.

(a) Requests for technical proposals shall be synopsisized in accordance with Part 5. The request must include, as a minimum, the following:

(1) A description of the supplies or services required.

(2) A statement of intent to use the two step method.

(3) The requirements of the technical proposal.

(4) The evaluation criteria, to include all factors and any significant subfactors.

(5) A statement that the technical proposals shall not include prices or pricing information.

(6) The date, or date and hour, by which the proposal must be received (see 14.201-6(r)).

(7) A statement that (i) in the second step, only bids based upon technical proposals determined to be acceptable, either initially or as a result of discussions, will be considered for awards and (ii) each bid in the second step must be based on the bidder's own technical proposals.

(8) A statement that (i) offerors should submit proposals that are acceptable without additional explanation or information, (ii) the Government may make a final determination regarding a proposal's acceptability solely on the basis of the proposal as submitted, and (iii) the Government